



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13051172

[REDACTED],
Complainant,

v.

HOWARD COUNTY SHERIFF'S DEPARTMENT,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. There is probable cause to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-2-4(b).

On May 16, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against Howard County Sheriff's Department ("Respondent") alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) and Title I of the Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was denied a reasonable accommodation for his disability, ultimately resulting in the loss of his employment. In order to prevail, Complainant must show that: (1) he had a disability or was perceived to have a disability as defined under the applicable laws; (2) Respondent was aware of Complainant's disability; (3) Complainant requested a reasonable accommodation; and (4) Respondent unreasonably delayed or denied Complainant's request for a reasonable accommodation.

It is evident that Complainant has a disability as defined under the applicable law and that Respondent perceived him to be disabled. Further, Respondent was aware of Complainant's disability. Moreover, Complainant requested a reasonable accommodation and the request was unreasonably denied by Respondent.

By way of background, Respondent hired Complainant in May of 1998 as a Correctional Officer. At all times relevant to the Complaint, his duties included but were not limited to supervising and



transporting inmates, ensuring the orderly operation of the facility, restraining inmates if necessary, and responding to unexpected or emergency situations. On or about July 24, 2012, Respondent's personnel department tendered a letter to Respondent's administrator, Sheriff Steven Rogers, indicating that Complainant experienced a qualifying event "which necessitates the need for FMLA paperwork to be sent to him. The paperwork has been completed and [Complainant] has been approved for FMLA." The letter also provided that Complainant would begin FMLA leave on or about August 20, 2012 and that leave would end approximately on or about November 11, 2012. The letter further stated that "this leave is due to a serious health condition." After using vacation days, Complainant's leave was extended to November 22, 2012. On or about November 14, 2012, Complainant obtained a doctor's note releasing him for light duty work on or about November 19, 2012 for a period of eight weeks. Respondent indicated that it did not provide light duty work and on or about November 15, 2012, evidence shows that Complainant tendered the doctor's note and filed a "Personal Leave" request with Respondent, requesting an additional 53 days of discretionary leave. Respondent denied Complainant's request on or about November 20, 2012 indicating that there was "no light duty assignment available" and terminated his employment on or about November 23, 2012.

Despite Respondent's assertions, Respondent's administrator admitted that he was aware that Complainant had taken medical leave to have "some type of surgery." Further, he admitted that in August 2012, Respondent placed two employees, Diana Hendricks and Mark Brackett, in light duty positions because "they had issues with their feet and could not perform their duties for a temporary period." Evidence further shows that Ms. Hendricks was placed on light duty status for four to six weeks following a foot surgery. Similarly, Complainant's direct supervisor, Captain Harold Vincent admitted that certain assignments such as central control, mail delivery, inspection, and others could be considered light duty. Simply stated, there is sufficient evidence to show that Respondent failed to enter into the interactive dialogue process with Complainant after learning that he could return to work in a light duty position. Specifically, no evidence has been submitted by Respondent to show that it offered Complainant any of the light duty assignments or discussed these items prior to terminating his employment on or about November 23, 2012. Further, it is important to note that Respondent terminated Complainant approximately six months before he was able to retire from service with Respondent. Thus, based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit of superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commissions' Administrative law Judge will hear this matter. Ind. Code 22-9-1-16, 910 IAC 1-3-6.

July 10, 2014
Date

Akia A. Haynes
Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission